

1
2 DECLARATION OF [REDACTED]

3 I Reginald [REDACTED] pursuant to 28 U.S.C. § 1746, hereby
4 declare as follows:

5 1. My name is [REDACTED] I am a U.S. citizen. I am an
6 attorney. I reside at [REDACTED]

7 2. I have personal knowledge about the facts set forth
8 below.

9 3. During early-Summer 1995, I spoke on various occasions
10 to a man named Mark Alexander, with a company called On Line
11 Communications ("On Line"). I first called Mr. Alexander as a
12 result of conversations that I had with [REDACTED]

13 [REDACTED] who I understood to have already invested with On Line,
14 using Mr. Alexander as his salesperson.

15 4. After I spoke to Mr. Alexander, he sent me various
16 promotional materials. I spoke to him again after receiving
17 those materials. Mr. Alexander told me that On Line would help
18 me acquire a license to provide two-way, or interactive, paging
19 services. He said that paging licenses are more valuable than
20 SMR licenses. He said that the paging licenses were the wave of
21 the future.

22 5. On July 6, 1995, I decided to invest with On Line. I
23 sent On Line a check for \$12,990, a true and correct copy of the
24 receipt for this check is attached as Exhibit 1. Mr. Alexander
25 told me that the money I was sending in would entitle me to
26 obtain a license serving New York City. He said that, next to
27 Los Angeles licenses, New York licenses were the most valuable
28

1 ones to acquire, because of the city's population. Mr. Alexander
2 told me before I invested that there were only a few licenses
3 left for New York City, so I must act fast in order to get one.
4 After he received my money, he told me that I was very fortunate
5 since I received the third-to-last license available.

6 6. Mr. Alexander discussed with me the value of the license
7 that I would be receiving. He said that I should be receiving
8 multiple offers to acquire the license, and suggested that I
9 lease the license rather than selling it outright. On one
10 occasion, Mr. Alexander told me specifically that my license was
11 worth \$30,000-\$40,000.

12 7. At different times during our early-July conversations,
13 Mr. Alexander told me that my investment in a license for New
14 York City was risk free. At one point, Mr. Alexander told me
15 explicitly that I was "guaranteed" to make a profit on the deal.
16 Later in the same conversation, he said that he could get in
17 trouble for using the word "guaranteed," but I would definitely
18 make money.

19 8. Mr. Alexander also told me that I could expect to
20 receive money in the very near future if I invested with On Line.
21 In presenting the program to me in early-July 1995, he said that
22 I should receive some money back before Christmas, 1995.

23 9. My original plan in dealing with On Line was to invest
24 together with [REDACTED] Indeed, on one
25 occasion, I was involved in a conference call with Mr. Alexander
26 and Mr. Goo. Ultimately, I decided to invest separately.

27 10. In my discussions with Mr. Alexander about the value of
28 acquiring paging licenses through On Line, I asked him why paging

1 companies could not get the licenses themselves. He told me that
2 the Federal Communications Commission would not allow them to do
3 so. According to Mr. Alexander, the paging companies should have
4 to come to private licensees (such as myself) to obtain the
5 licenses they need, because the FCC restricted the number of
6 licenses they could acquire.

7
8 11. Mr. Alexander told me after I invested that if I have a
9 license with a particular channel serving New York City, this
10 would be my channel and I would own it.

11 12. Prior to sending any funds to On Line, I do not recall
12 Mr. Alexander mentioning the idea that I might have to build out
13 a paging system if I wanted to make money from my license.
14 Indeed, I never considered building out such a system before I
15 invested. After I invested, I called Mr. Alexander and spoke to
16 him about how the licenses would be built out. He told me that I
17 would not have to worry about that, because the company to whom I
18 would be leasing my license would take care of building the
19 system.

20 13. After I invested, Mark Alexander called on different
21 occasions and discussed the possibility that I might acquire
22 additional licenses. He told me in July 1995 that there were a
23 number of licenses left for Chicago but those licenses would not
24 be available after a few days. He called me in August 1995 and
25 told me that he has licenses available in such cities as
26 Washington, D.C. and Los Angeles (Mr. Alexander claimed that this
27 Los Angeles license became available because someone had lied on
28

1 his application). He claimed that these licenses also would no
2 longer be available after a few days.

3 14. Mr. Alexander told me that when I receive calls from
4 companies attempting to acquire my license, I should make sure to
5 get the offers in writing. He also told me to provide the
6 information to Mr. Alexander, who would explain whether the offer
7 is from a legitimate company and whether it is high enough to
8 accept.

9 15. Within recent weeks, I received three paging licenses
10 as a result of On Line's services. Attached as Exhibit 2-4 are
11 copies of these licenses; these copies are true and correct
12 except that they do not include certain telephone numbers that
13 are stated on the licenses. Attached as Exhibit 5 are true and
14 correct copies of additional documents that I received together
15 with the licenses.

16 16. During the course of my relationship with On Line, I
17 have received various promotional literature as well as
18 information concerning my application for licenses. Attached as
19 Exhibit 6 are true and correct copies of many such documents.

20 17. On October 23, 1995, I received a letter from On Line.
21 Attached as Exhibit 7 is a true and correct copy of that letter.

22 18. I have yet to receive a single offer to buy or lease my
23 license.

24 I hereby certify under penalty of perjury that the foregoing
25 is true and correct.

26 Dated: 11/9/95

DECLARATION OF [REDACTED]

I, [REDACTED] pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. My name is [REDACTED] I am a U.S. citizen over age 18. I am a mechanical engineering consultant. [REDACTED]

[REDACTED]

2. I have personal knowledge of the facts set forth below.

3. In late August 1995, I received a cold call from a man who told me he represented On Line Communications ("On Line"). He marketed to me an investment in paging licenses. I decided not to invest at that time.

4. Approximately one to two weeks later, a man identifying himself as "Maurice" called me and told me he represented On Line. He tried to convince me to pay On Line \$60,000 for a package of licenses for cities in the midwest. He then pressured me to cut a certified check for \$60,000 right away and told me Federal Express would pick it up from my home the next day. The pressure and the hype were too much for me and I told him to forget it.

5. On Line sent me promotional materials in the mail. After reading the promotional materials, I understood that, were I to invest with On Line, I would receive licenses granting me exclusive use of the given frequencies in the areas covered by my licenses.

6. The basic pitch of On Line representatives was that as soon as I received my licenses, people would start calling me

1 offering to lease or purchase my licenses. They explained that I
2 would receive many offers because the FCC issues a limited number
3 of licenses for each coverage area, and no more than one license
4 for each entity that applies. The On Line representatives warned
5 me about cities that were sold out, or selling out fast. For
6 example, they said that Atlanta was "about to go," with the
7 Olympics in '96, and all. They pressured me to hurry up before
8 everything was gone.

9 7. The On Line salespeople assured me that leasing to a
10 paging company would yield "a pretty hefty income" --
11 approximately \$0.50 per pager, per month, or \$1,000 to \$2,000 per
12 month, per city.

13 8. The On Line representatives made it seem like I would
14 not have to do anything once I received my licenses -- like
15 market my licenses or build out paging systems -- because
16 operating paging companies would be contacting me with offers.

17 9. About a week and a half after the second phone call, a
18 man identifying himself as "Don Neff" called. He told me he was
19 the vice president of On Line. He convinced me to purchase a
20 "growth city package" that he claimed was available for me. I
21 agreed to go for licenses in: Orlando, FL; Atlanta, GA; Denver,
22 CO; Dallas/Fort Worth, TX, for a total of \$37,970. At the
23 insistence of Neff, I sent a wire transfer order in the amount of
24 \$37,970 on 9/27/95 to the benefit of On Line to their Las Vegas
25 Bank of America account. I have attached a true and correct copy
26 of this wire transfer order as Exhibit 1.

1 10. After I paid the \$37,970, Neff called me again and
2 convinced me to invest in a package of licenses for Miami and
3 Fort Lauderdale, FL. I sent another wire transfer order to the
4 Las Vegas account for \$12,500 on 10/10/95. I have attached a
5 true and correct copy of this wire transfer order as Exhibit 2.

6 11. I asked Neff why On Line charged so much. He explained
7 that On Line barely made any money on the deals because of the
8 several engineering studies that needed to be conducted for each
9 license and because of the complicated paper work that needed to
10 be filled out correctly.

11 12. Through On Line's services, I received licenses for the
12 following frequencies: 929.0625, 929.1625, 929.2625, 929.0875. I
13 have not yet received all of the licenses for which On Line
14 applied on my behalf. I have attached as Exhibit 3 true and
15 correct copies of the licenses I have received plus application
16 cards issued by the Personal Communications Industry Association
17 reflecting the licenses I have not yet received.

18 13. To date, I have not received any offers to purchase or
19 lease my licenses.

20 I hereby certify under penalty of perjury that the foregoing
21 is true and correct.

22
23 Dated: December 23, 1995

[Redacted Signature]
[Redacted Name]

OFFICIAL TRANSCRIPT ATTORNEY COPY
PROCEEDINGS BEFORE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DKT/CASE NO.: 9623015

CIV NO.:

TITLE: Federal Trade Commission v.
et al.

PLACE: New York, New York

DATE: March 11, 1996

PAGES: 1 through 182

Deposition of:

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, NW, Suite 600
Washington, D.C.
(202) 628-4888

EXHIBIT 23
1

1 client.

2 Q Why was that?

3 A We understand that there can be overlapping
4 applications on the 931 market area at which point the FCC
5 will take one of two actions. They will not grant first
6 come first serve basis. They will put it out for subsequent
7 auction or non-competitive lottery. We did not feel that
8 this was in the best interest of our clients. The only
9 clients we put on 931s were those clients that specifically
10 requested 931s.

11 Q I'm showing you what's been marked as Exhibit 13,
12 Mr. entitled on the top 152 MHZ VHF in
13 parentheses. It's a one page document with some handwriting
14 on it, typewritten with also some handwriting on it. Do you
15 recognize Exhibit 13?

16 (Document above referred to
17 was marked for identification
18 as Exhibit 13.)

19 A Yes.

20 Q Do you recognize the handwriting?

21 A Most of the handwriting, yes.

22 Q And who's is that?

23 A Mine.

24 Q Is this the document that you received from
25 Mr.

1 Q When you say guideline, what do you mean?

2 A We were of the belief that the FCC was eventually
3 going to auction off all licenses which would have
4 effectively put out of business.

5 Somewhere along the course of my responsibility to search
6 out new products, this one came to me and I thought it might
7 be a good idea. So we setup a company. I wrote up some
8 guidelines as to how to effectively handle the product as
9 well as the clients. And this is basically a text of that
10 guideline.

11 Q If I understand your testimony, you drafted
12 Exhibit 18.

13 A- Yes.

14 Q And subsequently had somebody type it?

15 A- Yes.

16 Q Do you recognize any of the handwriting on it?

17 A No.

18 Q , was that a company that you
19 incorporated?

20 A I incorporated

21 Q When?

22 A I don't remember, December '95, January of '96.

23 Q Did have offices? -

24 A It never got off the ground.

25 Q To whom did you give this Exhibit 18 as a

Heritage Reporting Corporation
(202) 628-4888

1 Q And when you say that you spoke with many license
2 holders, were they license holders?

3 A Some.

4 Q What type of licenses did they have?

5 A Paging.

6 Q What type of paging?

7 A SMRs, 929s, 931s.

8 Q Are they shared licenses or exclusive licenses?

9 A I don't recall the details.

10 Q In Chadmore I believe you testified that you don't
11 know what type of system they operate?

12 A No.

13 Q You don't know how big a system they operate?

14 A No.

15 Q Do you know if they ever paid any monies to Micom
16 licensees for - for the use of those licenses?

17 A I know that they had contracts in place. I don't
18 know if monies were submitted.

19 Q You testified on Monday that you believed that the
20 licenses, that the paging licenses that was soliciting
21 applications for had inherent value. Do you recall that
22 testimony?

23 A Yes, sir. -

24 Q What do you mean by inherent value?

25 A They have value in and of themselves.

Heritage Reporting Corporation
(202) 628-4888

1 A I don't believe that the government would put them
2 out for public consumption if they were valueless. I don't
3 believe that there would be mad scrambling of billions upon
4 billions of dollars to the auctions if they had no value. I
5 don't believe that knowledgeable investors such as Bill
6 Gates would go after licenses without value. I'm a believer
7 in scientific advancement.

8 Q Let's talk about specifically shared-paging
9 licenses. Do you believe the they're worth billions of
10 dollars?

11 A In the aggregate?

12 Q No, individually.

13 A I don't know that you would ever buy anything for
14 billions of dollars.

15 Q And shared-paging licenses, they are not issued
16 through an auction are they?

17 A I don't believe so.

18 Q And you don't know, you don't know if Bill Gates
19 owns any paging licenses do you?

20 A I understood he acquired one at auction.

21 Q A paging license?

22 A That's what I understood.

23 Q Who did you understand that from? —

24 A News reports.

25 : Would you have copies of those news

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DKT/CASE NO.: 9623015

CIV NO.:

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PLACE: Washington, D.C.

DATE: March 15, 1996

PAGES: 183 through 382

Deposition of:

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, NW, Suite 600
Washington, D.C.
(202) 628-4888

EXHIBIT 24

1 We had done some filings for our clients a few
2 days before, and one of my engineers, one of my
3 engineering subcontractors, contacted me on the next day
4 and said, "Listen, last night at midnight the government
5 froze the SMR program." It was obvious to both myself and
6 that we were pretty much at the mercy of the FCC's
7 decisions with regard to turns of events or the future of
8 the business and we should scout out new products for
9 and its clients.

10 Q. What products were those?

11 A. We had not come up with any particular
12 products. Any specific products at that time.

13 Q. In your mind, did you have a long future at
14 doing what was doing or were you looking for
15 other opportunities?

16 A. We had created to be a
17 long-lived entity. So obviously we were looking to do
18 whatever we could reasonably do to maintain our existing
19 client base, broaden our client base, and basically
20 continue in the communications field.

21 Q. What other opportunities were you looking at in
22 December to go into if, for example, the government
23 announced that it was going to shut down or freeze paging
24 applications? Did you have an exit strategy?

25 A. The first question would have been, well, what

FILED

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CENTRAL DISTRICT OF CALIFORNIA

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

96- 0455 *kmw(SHx)*

Case No.

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

BELL CONNECTIONS, INC.,
JIMMIE JUSTUS, and
MICHAEL BERMAN, d/b/a
DISCOUNT FILING SERVICES,

Defendants.

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
OF PLAINTIFF FEDERAL TRADE
COMMISSION'S EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER WITH
ASSET FREEZE, APPOINTMENT
OF TEMPORARY RECEIVER, ORDER
FOR IMMEDIATE ACCESS,
EXPEDITED DISCOVERY,
AND ORDER TO SHOW CAUSE WHY
PRELIMINARY INJUNCTION
NOT ISSUE

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STATUTES

Cal. Bus. & Prof. Code §17511 <u>et seq</u>	30
15 U.S.C. §41, <u>et seq.</u>	passim

MISCELLANEOUS

47 C.F.R. parts 90 and 22	7, 8, 15, 16
S. Rep. No. 130, 103rd Cong., 2d Sess. 15-16, <u>reprinted in</u> 1994 U.S. Code Cong. & Admin. News 1776, 1790-91	29

1 I. INTRODUCTION

2 Plaintiff Federal Trade Commission ("FTC" or "Commission")
3 brings this action to halt and redress defendants' violations of
4 Section 5(a) of the Federal Trade Commission Act, ("FTC Act"), 15
5 U.S.C. §45(a), which prohibits deceptive acts or practices in or
6 affecting commerce. Defendants have violated Section 5 by
7 fraudulent telemarketing application preparation services for,
8 and investments in, paging licenses issued by the Federal
9 Communications Commission ("FCC").

10 Investment schemes involving FCC licenses have proven to be
11 popular among fraudulent telemarketers. The Commission has
12 brought law enforcement actions against cellular phone license
13 lottery scams,¹ wireless cable license application mills,²
14 specialized mobile radio ("SMR") license application and build-
15 out schemes,³ and partnership frauds involving interactive
16
17
18

19 ¹ See, e.g., FTC v. American Nat'l Cellular, 810 F.2d 1511
20 (9th Cir. 1987) (upholding preliminary injunction with asset
21 freeze and appointment of receiver); FTC v. The Cellular Corp.,
No. C85-8231(WHO) (N.D. Cal. Mar. 3, 1986) (stipulated permanent
injunction).

22 ² See, e.g., FTC v. Spectrum Resources Group, Inc., No. CV-
23 N-695-HDM (RLH) (D. Nev. Feb. 28, 1995) (prevailed on merits at
24 trial; permanent injunction, consumer redress and disgorgement
25 ordered); FTC v. American Microtel, No. CV-S-92-178-LDG (D. Nev.
26 Dec. 23, 1993) (stipulated permanent injunction and consumer
redress ordered); FTC v. Applied Telemedia, No. 91-0635-CIV-
Ungaro-Benages (S.D. Fla. Jan. 12, 1993) (stipulated permanent
injunction and consumer redress ordered).

27 ³ See, e.g., FTC v. Digital Communications, Inc., No. 93-
28 6648-JGD (JRX) (C.D. Cal. Feb. 16, 1995) (stipulated permanent
injunction; summary judgment against one defendant); FTC v.
Metropolitan Communications, Corp., No. 94-Civ-0142
(JFK) (S.D.N.Y. Jan. 31, 1994) (stipulated preliminary injunction
entered; case is pending).

1 television licenses.⁴ The latest in this long line of
2 "information superhighway robbery," an investment scheme
3 involving FCC paging licenses, has precipitated this action.

4 Through a nationwide telemarketing campaign, defendants sell
5 paging license "application preparation services." Defendants
6 charge consumers thousands of dollars to prepare and file
7 applications for paging licenses with the FCC. Defendants tout
8 such licenses as an excellent passive investment opportunity,
9 telling consumers that they will reap thousands of dollars in
10 profits, without additional expense or effort, by selling or
11 leasing the licenses they obtain to large paging businesses.
12 Defendants further claim that since paging carriers are
13 prohibited from acquiring more than one license per geographic
14 area from the FCC directly, they are more than willing to pay
15 huge sums to buy or lease licenses from other licensees.

16 All of these claims are patently false. Rather than
17 realizing phenomenal profits, consumers are likely to lose all of
18 the money they invest with defendants. First, contrary to
19 defendants' false claims, the FCC does not restrict paging
20 operators from acquiring more than one license per geographic
21 area -- such operators can, and do, obtain multiple licenses per
22 area from the FCC. Second, paging carriers do not typically buy
23 or lease bare licenses for undeveloped paging systems from
24 individual consumers -- they obtain licenses from the FCC

25
26 ⁴FTC v. Chase McNulty Group, Inc., No. 95-524-CIV-T-25E
27 (M.D. Fla. Jan. 10, 1996) (stipulated permanent injunction with
28 permanent receiver and consumer redress filed), FTC v. Digital
Interactive Associates, Inc., No. 95-Z-754 (D. Colo. April 7,
1995) (preliminary injunction ordered; case is pending).

1 themselves, or they acquire operational paging systems from other
2 paging carriers. Third, the FCC expressly prohibits the
3 acquisition of paging licenses for the purpose of speculation or
4 profitable resale. Licensees are expected to develop and operate
5 paging systems themselves, and consumers who acquire licenses in
6 violation of this policy risk forfeiture of their licenses. In
7 sum, the licenses defendants tout as highly valuable and an
8 excellent passive investment opportunity, in fact have little or
9 no resale or investment value, and defendants have swindled
10 consumers throughout the United States.

11 There is compelling evidence of defendants' fraudulent
12 scheme, including transcripts of telemarketing sales pitches
13 tape-recorded by undercover investigators, as well as
14 declarations from defrauded consumers themselves. Declarations
15 from the FCC, a paging industry expert, and representatives of
16 the some of the largest paging companies in the nation
17 conclusively prove the falsity of defendants' representations.
18 The injury from defendants' scheme is large -- defendants' own
19 documents show that they have taken in over \$4.5 million dollars
20 from consumers. Absent action by this Court, their fraud will
21 continue unabated, and potential redress for injured consumers
22 will be squandered.

23 The Commission brings this ex parte application to obtain a
24 temporary restraining order and asks this Court to (1) prohibit
25 defendants from using deceptive practices in connection with the
26 sale of FCC license application services; (2) freeze defendants'
27 assets, (3) allow the Commission immediate access to relevant
28 documents at defendants business premises, and allow for

1 expedited discovery as to the location of assets and documents;
2 (4) appoint a temporary receiver over the corporate defendant;
3 and (5) set a show cause hearing on why a preliminary injunction
4 should not issue. This relief is critical to preserve assets for
5 redress to injured consumers, secure key documents, and halt the
6 ongoing fraud. As set forth below, there is extensive precedent
7 within this Circuit and District to grant such relief in
8 appropriate Commission actions.

9 10 **II. THE PARTIES**

11 Plaintiff **Federal Trade Commission** is an independent agency
12 of the U.S. Government created by the FTC Act, 15 U.S.C. §41 et
13 seq. The Commission enforces, among other things, Section 5(a)
14 of the FTC Act, 15 U.S.C. §45(a), which prohibits deceptive acts
15 or practices in or affecting commerce. Section 13(b) of the FTC
16 Act, 15 U.S.C. §53(b), authorizes the Commission to file actions
17 to enjoin FTC Act violations, and to secure the equitable relief
18 appropriate in each case. See FTC v. H.N. Singer, Inc., 668 F.2d
19 1107, 1111-1113 (9th Cir. 1982).

20 Defendant **Bell Connections, Inc.** ("Bell") is a California
21 corporation with its principal places of business in Woodland
22 Hills, California. (Ex. 11 at 385; Ex. 9 at 174). Defendant Bell
23 has telemarketed application services for, and investment
24 opportunities in, paging licenses since approximately April 1995,
25 when it took over the operations of Discount Filing Services, a
26
27
28

1 d/b/a of defendant Berman. (Ex. 11 at 386).⁵ Bell income
2 statements the Commission received from one Bell customer show
3 that the company has taken in over \$4.5 million since 1994. (Ex.
4 13 at 458-59).⁶

5 Bell has failed to comply with the California Telephonic
6 Sellers Act, which requires all telephonic sellers of "any . . .
7 investment opportunity of any type whatsoever" to register with
8 the State of California, and most importantly, to post a bond in
9 the amount of \$100,000 in favor of the State, for the benefit of
10 any consumer harmed by violations of the Act. Violations of the
11 Act are punishable by a fine of \$10,000 for each violation,
12 and/or imprisonment for one year. Cal. Bus. & Prof. Code §17511
13 et seq.; (Ex. 11 at 278).

14 Defendant **Jimmie Justus** ("Justus") is listed as the chief
15 executive officer, chief financial officer, secretary, and sole
16 director of defendant Bell on Bell's corporate filings. (Ex. 11
17 at 385). Justus has also signed promotional letters to consumers
18 as Bell's president. (Ex. 2 at 26; Ex. 6 at 153).

19 Defendant **Michael Berman** ("Berman") has done business as
20 **Discount Filing Services** ("DFS"), a fictitious business
21

22
23 ⁵ In March 1995, one consumer was solicited by a
24 representative of *Discount Filing Services*, and later noticed
25 that Discount Filing Services had changed its name to Bell on
26 promotional materials. (Ex. 8 at 157). Another consumer was
27 solicited by a Bell representative in April 1995, (Ex. 6 at 104),
28 suggesting that defendants started using Bell's name around April
1995.

⁶ These income statements were included with a letter to
the Bell customer dated January 8, 1995 that stated that Bell was
now "offering stock to [its] clients at the rate of \$1.00 per
share (minimum 10,000 shares)." (Ex. 13 at 457).